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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,600	07/18/2003	Wayne McCullough	40031-6	4303

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EXAMINER

CARIASO, ALAN B

ART UNIT PAPER NUMBER

2875

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/622,600

Applicant(s)

MCCULLOUGH ET AL.

Examiner

Alan Cariaso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on August 13, 2004. These drawings are approved in terms of form. However, they are objected for the following reason(s) below.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "at least one wire connected at a first place to at least one of said speakers and at a second place at an adaptor" (claim 1, lines 6-7) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Reference to “an adaptor” as claimed in claim 1 (line 7) including the arrangement “at least one wire connected at a first place to at least one of said speakers and at a second place at an adaptor” (claim 1, lines 6-7) should be included in the specification.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-6, 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by MCCLANAHAN (US 2003/0202341 A1).

6. MCCLANAHAN discloses a headset (100) comprising a pair of ear cups (20), each having a shell (col.2, paragraph 0020) and at least one speaker (col.2, paragraph 0022) within said shell, said shell (200 having an opening for fitting adjacent an ear; a band (15) connecting said ear cups (20) and adapted to fit over a wearer's head; at least one wire (col.2, paragraph 0019) connected at a first place to at least one of said speakers and at a second place to an adaptor (25), whereby electronic signals can be passed from said adaptor through said wire to said at least one of said speakers (col.2, paragraph 0019); at least one light-emitting diode (2) attached to a first of said ear cups (20), and at least one light-emitting source (2) attached to a second of said ear cups (20), said light-emitting diodes (2) being directed so that they can illuminate an area generally along a direction the wearer is looking (col.2, parag.0021); at least one switch (1) attached to one of said ear cups (20); a power source (col.2, parag.0025); and conductors (7, fig.3) connecting said light-emitting diodes (2), said switch and said power source (col.3, parag.0028); wherein said power source is a battery (col.2, parag.0025) attached inside one of said ear cups (20); wherein said power source is a hot outlet (col.2, parag.0025); wherein said light-emitting diodes (2) include a first set of at least one light-emitting diode (left LED 2 in left ear cup 20, fig.1) and a second set of at least one light-emitting diode (right LED 2 in right ear cup 20, fig.1), and said switch (1) includes an off position, a first on position permitting at least said first diode set to illuminate, and a second on position permitting at least said second diode set to illuminate (col.2, parag.0023, discloses 3 way switch selecting which LEDs 2); wherein said light-emitting diodes include a first set of one or more light-emitting diodes (left LED

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2 in left ear cup 20, fig.1) and a second set of one or more light-emitting diodes (right LED 2 in right ear cup 20, fig.1), and said at least one switch (1) includes a first switch controlling said first diode set and a second switch controlling said second diode set (col.2, parag.0022, discloses separate knobs for separately controlling LEDs in each ear cup); wherein each of said ear cups (20) has a plurality of light-emitting diodes (2) attached to said ear cups (col.2, parags.0021-0022, discloses a cluster of LEDs 2 could be mounted within the earcup 20 to produce more intense light beam, and controlling the LEDs 2 or each earcup 20 separately); a length of wire (cord in col.2,parag.0025 or wires 7 in parag.0028), at one switch (1, col.2,parags.0022-0024), a plurality of LEDs (2, col.2, parag.0021-0022), a battery holder (mounted in 20) including a battery (col.2, parag.0025) and an circuit diagram (closed connection of these parts) fitted on or in the headset (100).

7. Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by TAKASU (US 2002/0027777 A1).

8. TAKASU discloses a kit comprising: a length of wire (as illustrated in fig.3 between 38,41,35 and 34), at least one switch (35), a plurality of light emitting diodes (38 or 53 in fig.6), a battery holder (32) and a circuit diagram (fig.3 or fig.4b), wherein said switch (35), said diodes (38,53), and said battery holder (32) are fitted on or in the headset (21) to be connected to create a circuit according to the circuit diagram (figs.3,4b); further comprising a battery (34) adapted to fit in the battery holder (32).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over MCCLANAHAN (US 2003/0202341 A1) in view of SHIMADA et al (US 2001/0021108).

11. Claim 7 recites the light-emitting diodes have an intensity of from about 1000 millicandelas to about 3000 millicandelas, not disclosed by MCCLANAHAN.

12. SHIMADA teaches user-supported illuminating device having light-emitting diodes (14) in panel (15) provided light housings (5, fig.1, col.4, parag.0063), the LEDs (14) having an intensity of 3 candela (col.4, parag.0064) for the purpose of illuminating a relatively narrow area and short distance (50 cm) with appropriate directivity and intensity. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the headset lighting device of MCCLANAHAN to include the type of LEDs of SHIMADA in order to intensely illuminate a relatively narrow area and short distance (gazing point) so as to have clearly focus and illuminate the task by the wearer or user of the lighting device.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over MCCLANAHAN (US 2003/0202341 A1) in view of HANLEY (US 6,733,150).

14. Claim 11 recites at least two white light-emitting diodes and two red light-emitting diodes, not disclosed by MCCLANAHAN.

15. HANLEY teaches two white light-emitting diodes (1932, fig.19) and two red light-emitting diodes (1933, fig.19) incorporated in any of the illustrated headgear (figs.12-18) for the purpose of seeing instruments in the cockpit while preserving night vision in an emergency landing and examining a map and parts of the aircraft (col.13, line 65 to col.14, line 12) without the constraint of carrying a flashlight while flying at night. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the headset lighting device of MCCLANAHAN to include the type of pair sets of white and red LEDs as taught by HANLEY in order to provide any of red and white light in one convenient headgear device for night-vision of the instruments and general illumination while flying at night minimizing manual constraint because there is no separate lighting device.

16. Claims 10 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over MCCLANAHAN (US 2003/0202341 A1) in view of TOCCI et al (US 6,367,943 B1).

17. Claim 10 recites a drilling template indicating positions for drilling holes, the drilling template adapted to be placed adjacent to the ear cups, not disclosed by MCCLANAHAN. In regards to claims 12-14, MCCLANAHAN discloses the headset lighting device (see paragraph 6 above) and including providing ear cups (20) with openings (figs.1-3) on/in which are mounted LEDs (2), switch (1), internally mounted



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power source (battery) or power wires, and connection between these parts. However, MCCLANAHAN does not disclose the step of drilling these holes or apertures.

18. TOCCI teaches a drilling template (50, fig.10) as part of a kit (col.6, lines 58-67) for the purpose of modifying a shield by the step of drilling holes from the mounting template (50, col.7, lines 1-10) so as to install a housing (14) of LED array (22), that battery housing (16) and switch (17) on or in the shield (fig.14). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the headset lighting device of MCCLANAHAN to include a drill template as taught by TOCCI et al in order to drill corresponding holes that facilitate installation of the common parts of the light device part on or in an ear cup or head set.

### ***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. BRITTAIN (US 5,675,658) shows installation of a circuit (ANR) as a kit (col.5, lines 33-46) that includes a method step of drilling holes in ear cups for positioning electrical leads or power source wires (col. 5, lines 46-53). LEE et al (US 4,618,917) show a step of drilling holes (col.3, line 60 to col.4, line 9) to install LEDs (13, fig.1) on mouthpiece (12) as part of simplifying manufacture. EICHOST (US 4,969,069) shows pairs of ear cups of headset in which one (12) includes a self-powered light device installed in an opening thereof and the other one (11) having a self-powered light device installed on the ear cup surface (fig.2). MYERS et al (US 5,751,825) show at least an indicator light (44, figs.1,2B), speaker (26B, fig.3), switch


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(62) electrically connected and installed in an ear cup, illustrated as a circuit diagram (fig.3). LEHRER (US 6,290,368) shows an integral self-powered light device (fig.13) that includes plural LEDs (33), switch (44), battery (52) electrically connected in circuit diagram (fig.14), all installed onto or adjacent ear cup of a headset (fig.12).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alan Cariaso  
Primary Examiner  
Art Unit 2875

AC  
March 6, 2005